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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

KENNY BONDS #292089,
Plaintiff

CIVIL DOCKET NO. 1:20-CV-00293
SEC P

VERSUS

JUDGE DAVID C. JOSEPH

W S SANDY MCCAIN ET AL,
Defendants

MAGISTRATE JUDGE PEREZ-MONTES

MEMORANDUM ORDER

Pro se plaintiff Kenny Bonds (“Bonds”) filed a civil rights complaint, *in forma pauperis*, pursuant to 42 U.S.C. § 1983. The named Defendants are Warden W.S. Sandy McCain, James Longino, and Steve Bordelon.

Defendant W.S. Sandy McCain was dismissed on notice of death. ECF Nos. 12, 15. However, the current warden, Marcus Myers, was not substituted for Warden McCain on the record.

Fed. R. Civ. P. 25(d) provides in pertinent part:

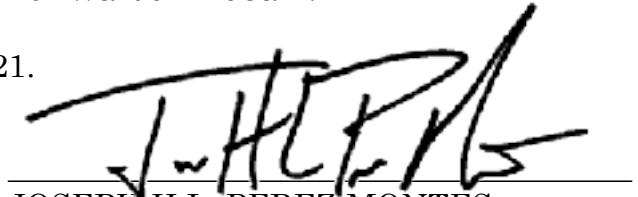
(d) Public Officers; Death or Separation from Office. An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

“The general term ‘public officer’ ... comprises Federal, State, and local officers.” Rule 25, Advisory Committee Notes, Note to Subdivision (d)(1). “In general [Rule 25(d)]

will apply whenever effective relief would call for corrective behavior by the one then having official status and power, rather than one who has lost that status and power through ceasing to hold office.” Note to Subdivision (d)(1); *see also Kentucky v. Graham*, 473 U.S. 159, 166 n. 11 (1985); *Aschan v. Auger*, 861 F.2d 520, 521 n. 2 (8th Cir. 1988) (automatically substituting new warden in his official capacity for deceased warden defendant in a habeas corpus action); *Dixon v. Barr*, 2021 WL 415811, at *2–3 (W.D. La. 2021); *American Civil Liberties Union of Mississippi, Inc. v. Finch*, 638 F.2d 1336, 1341–42 (5th Cir. 1981); *Muslow v. Board of Supervisors of Louisiana States University*, 2020 WL 4471647, * 11 (E.D. La. 2020).

Because Warden Myers was automatically substituted as a Defendant by operation of law, the Clerk of Court is DIRECTED to add Warden Marcus Myers to the docket as a Defendant in substitution for Warden McCain.

SIGNED on Monday, March 8, 2021.



JOSEPH H.L. PEREZ-MONTES
UNITED STATES MAGISTRATE JUDGE